UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DONNA BONNER BLANTIN,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:03 CV 2162 (CFD)
PARAGON DECISION RESOURCES, INC.,	:	
Defendant.	:	

RULING ON MOTION TO DISMISS

The plaintiff, Donna Bonner Blantin ("Blantin"), brought this action against her former employer, Paragon Decision Resources, Inc. ("Paragon"), alleging violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq. ("Title VII"), Connecticut's Fair Employment Practices Act, Conn. Gen. Stats. § 46a-51 et seq. ("CFEPA"), and state law claims of wrongful discharge, intentional and negligent infliction of emotional distress. Pending is Paragon's Motion to Dismiss [Doc. #9].

Paragon moves to dismiss Counts Four, Five, and Six of the Complaint, which allege wrongful discharge, intentional infliction of emotional distress, and negligent infliction of emotional distress, respectively. Paragon argues that Blantin fails to state a claim in Counts Four, Five, and Six under Federal Rule 12(b)(6) of the Federal Rules of Civil Procedure. In addition, Paragon argues that Count Six is barred by the statute of limitations.

I. Motion to Dismiss Standard

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v.

Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147, 150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

II. Discussion

A. Count Four - Wrongful Discharge

Paragon argues that Blantin fails to state a claim for a public policy wrongful discharge action because under Connecticut law no cause of action for wrongful discharge is available when a plaintiff has a statutory remedy. The Court agrees.

Under Connecticut law, a plaintiff may bring a wrongful discharge action based on a violation of public policy. Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 475 (1980). However, such an

action is disallowed where the plaintiff has an available statutory remedy. See Burnham v. Karl and Gelb, P.C., 252 Conn. 153, 161-62 (2000); see also Atkins v. Bridgeport Hydraulic Co., 5 Conn. App. 643, 648 (1985) ("The cases which have established a tort or contract remedy for employees discharged for reasons violative of public policy have relied upon the fact that in the context of their case the employee was otherwise without remedy and that permitting the discharge to go unredressed would leave a valuable social policy to go unvindicated.") (internal quotations omitted); Swihart v. Pactiv Corp., 187 F. Supp. 2d 18, 25 (D. Conn. 2002) (granting summary judgment as to the wrongful discharge claim because "[t]he public policy against retaliation is adequately vindicated through Title VII.").

Count Four of the Complaint in this case states that "the defendant is in violation of important public policy that allows an individual to object and not be part of the harassing atmosphere." In Counts One through Three, Blantin alleges that she was retaliated against for complaining about a hostile work environment, that she was discriminated against based on her sex, and that she was subjected to a hostile work environment, all in violation of Title VII and CFEPA. The public policy that Blantin refers to in the wrongful discharge claim in Count Four is the same as that in Title VII and CFEPA. Since Blantin has remedies available to her under Title VII and CFEPA, she may not bring a common-law wrongful discharge action based on a violation of the public policy embodied in Title VII and CFEPA.[1] Accordingly, Paragon's Motion to Dismiss is granted as to the wrongful discharge claim

[1] Blantin argues that the remedies available under Title VII and CFEPA are not the equivalent of those available under her wrongful discharge cause of action. Burnham, however, specifically forecloses this argument: "There is nothing in Atkins v. Bridgeport Hydraulic Co. (citation omitted), however, to suggest that a statutory remedy must be equivalent to a potential common law cause of

in Count Four.

B. Count Five - Intentional Infliction of Emotional Distress

Paragon argues that Blantin has failed to state a claim for intentional infliction of emotional distress as alleged in Count Five of the Complaint because Paragon's conduct was not sufficiently extreme and outrageous.

Intentional infliction of emotional distress "requires a plaintiff to allege (1) defendant intended to inflict emotional distress, or knew or should have known that it was a likely result of its conduct, (2) extreme and outrageous conduct, (3) the conduct caused plaintiff's distress and (4) plaintiff's emotional distress was severe." Carroll v. Ragaglia, 292 F. Supp. 2d 324, 343-44 (D. Conn. 2003) (citing DeLaurentis v. New Haven, 220 Conn. 225, 266-67 (1991)). "'In order to state a cognizable cause of action, Plaintiff must not only allege each of the four elements, but also must allege facts sufficient to support them.'" Id. at 344 (quoting Whitaker v. Haynes Constr. Co., 167 F. Supp. 2d 251, 254 (D. Conn. 2001)).

Blantin has alleged facts sufficient to entitle her to present evidence as to her claim of intentional infliction of emotional distress. Accordingly, Paragon's Motion to Dismiss is denied as to Count Five.

C. Count Six - Negligent Infliction of Emotional Distress

Under Connecticut law, in the employment context, liability for negligent infliction of emotional distress arises only in the context of termination. Parsons v. United Techs. Corp., 243 Conn. 66, 88 (1997). "[A] claim of negligent infliction of emotional distress cannot be predicated on actions or

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action for wrongful termination in order for the common law cause of action to be precluded." 252 Conn. at 164-65.

omissions of employees occurring within the context of a continuing employment relationship." Armstead v. Stop & Shop Cos., 2003 WL 1343245, *4 (D. Conn. March 17, 2003). See also Copeland v. Home and Cmty. Health Servs., 2003 WL 22240629 (D. Conn. Sept. 29, 2003); Absher v. Flexi Int'l Software, Inc., 2003 WL 2002778, *3 (D. Conn. March 31, 2003); Brunson v. Bayer Corp., 237 F. Supp. 2d 192, 208-09 (D. Conn. 2002); Boateng v. Apple Health Care, Inc., 156 F. Supp. 2d 247, 254 (D. Conn. 2001); Abate v. Circuit-Wise, Inc., 130 F. Supp. 2d 341, 346 (D. Conn. 2001); Perodeau v. City of Hartford, 259 Conn. 729, 744-63 (2002). There is well-established Connecticut Supreme Court and District Court of Connecticut precedent that "only conduct occurring in the process of termination can be a basis for recovery for negligent infliction of emotional distress in the employment context." Brunson, 237 F. Supp. 2d at 208.

Blantin alleges no qualifying facts that occurred in the context of the termination of her employment. All of the allegations in the Complaint refer only to conduct that occurred during the course of her employment, except that when Blantin was terminated she was "escorted from the building" and not then fully informed of the reasons for her termination. Reviewing the complaint in the light most favorable to the plaintiff, the Court concludes that Blantin has failed to allege any behavior by Paragon that could support a claim for negligent infliction of emotional distress. Accordingly, Paragon's Motion to Dismiss is granted as to Count Six.

III. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss [Doc. #9] is GRANTED IN PART, DENIED IN PART. Plaintiff's remaining causes of action are that she was retaliated against for

complaining about a hostile work environment, that she was discriminated against based on her sex, and that she was subjected to a hostile work environment, all in violation of Title VII and CFEPA, and the state law claim for intentional infliction of emotional distress. SO ORDERED this 31st day of August 2004, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE